

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0010
STATE GROSS RETAIL TAX
For Years 1998 to 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Sales Tax – Application of sales tax to payments for leased tangible personal property.

Authority: 45 IAC 2.2-4-27

Taxpayer protests the assessment of sales tax on payments made for leased tangible personal property.

II. Gross Retail Sales Tax – Assessment of sales tax on real property.

Authority: IC § 6-8.1-5-4

Taxpayer protests the assessment of sales tax on lease payments for real property.

III. Tax Administration – Waiver of Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b)

Taxpayer seeks waiver of the penalties because the tax liabilities were due to reasonable cause and not due to willful neglect.

STATEMENT OF FACTS

Taxpayer is primarily engaged in business as a motor fuel distributor and retailer. Taxpayer owns and operates retail mini marts along with a fuel distributorship. Taxpayer sells gasoline, diesel oil, furnace oil, kerosene, motor oil, and special fuels. Taxpayer also sells grocery items and sundry items. At the time of the audit all of taxpayer's business was in Indiana. Taxpayer protested the adjustments made based on taxpayer's leasing of equipment of one of their Indiana mini marts from a bank. These items included all of the store fixtures and fuel dispensing equipment. Taxpayer maintained it had paid sales tax on the initial purchase of these items and that some of these items constituted real property.

DISCUSSION

I. Gross Retail Sales Tax – Application of sales tax to payments for leased tangible personal property.

Adjustments were made based on taxpayer's leasing of equipment of one of their Indiana mini marts from a bank. These items included all of the store fixtures and fuel dispensing equipment. The assessment was based on 45 IAC 2.2-4-27 which subjects rented or leased equipment to sales tax just as the equipment would have been subject to sales tax in an equivalent sales transaction.

Taxpayer argues that the equipment in question was originally purchased by the taxpayer and was purchased subject to sales tax. The taxpayer then entered into a financing agreement with the bank, apparently in the form of the aforementioned property transfer and lease back, to improve their cash flow for normal operating expenditures. Taxpayer cites no statute, regulation, or case to establish a basis for the department to ignore the documented arrangements between the bank and taxpayer. While taxpayer asserts that this is merely a case of form over substance, the Department would note that this financial arrangement has federal and state tax ramifications for both the bank and the taxpayer, for example the lease explicitly grants the bank the tax benefits for the depreciation and amortization deductions for the property. Unilateral equitable adjustments by the Department for one party in a single area would permit both taxpayer and the bank to classify the financial activity in a contradictory fashion, maximizing the tax benefit to both parties and circumventing procedural safeguards. The Department declines to countenance this activity.

FINDINGS

Taxpayer's appeal is respectfully denied.

II. Gross Retail Sales Tax – Assessment of sales tax on real property.

Taxpayer argues that a substantial portion of the items purchased consisted of real property. Taxpayer contends that the inferences resulting in assessment were not properly drawn. This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided further detail as to the percentage and type of items that it considered real property. Inasmuch as the taxpayer's original contention that sales tax was paid on the purchase of these items and the lease agreement in question specified the materials leased as service

station equipment, there appeared to be a basis for granting a reduction in the department's assessment for those items sufficiently identified as real property. However, a review of the documents provided by the taxpayer- consisting of a portion of the lease with a selective and incomplete list of items acquired- is an unacceptable basis for the Department to revise its assessment.

FINDINGS

Taxpayer's appeal is denied.

III. Tax Administration – Waiver of Penalty

DISCUSSION

Finding the liabilities were "due to negligence," IC 6-8.1-10-2.1 (a)(3), the Department imposed a ten percent penalty. The term "negligence" is defined in 45 IAC 15-11-2 (b), pertinently:

"Negligence" on behalf of a taxpayer is defined as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.

Taxpayer entered into an agreement that explicitly requires the remittance of sales tax and failed to do so without any regulatory or statutory justification. No waiver of the penalty is appropriate.

FINDINGS

The taxpayer's appeal is denied.